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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 523.

CRYSTAL CITY GLASS WORKERS' UNION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITIONER'S BRIEF.

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PROCEEDINGS AND OPINIONS BELOW.

The proceeding in question began with a petition, subsequently amended, for investigation and certification of representatives, pursuant to Section 9-c of the National Labor Relations Act (49 Stat. 453, 28 U. S. C. A., Sec. 159), filed by the Federation of Flat Glass Workers of America, affiliated with the C. I. O. (referred to herein as "Federation"), asserting that the appropriate bargaining unit consists of production and maintenance employees in the Pittsburgh Plate Glass Company's flat glass division,

including plate and safety glass plants located at Creighton and Ford City, Pennsylvania, and Crystal City, Missouri, and window glass plants located at Mt. Vernon, Ohio; Clarksburg, West Virginia, and Henryetta, Oklahoma (R. 354-A, 354-B).

At the hearing thereon, this petitioner, the Crystal City Glass Workers' Union (referred to herein as "Crystal City Union") filed its motion to intervene in said proceeding, asserting that it represented approximately 1,500 of a total of 1,800 employees in the Company's plant at Crystal City. The Trial Examiner denied said motion on the ground that said Union was a party to said proceedings (R. 62-63).

On January 13, 1939, the Board issued its Decision and Certification of Representatives,[1] designating all of the Company's flat glass division as the appropriate unit and certifying the Federation of Flat Glass Workers of America as the exclusive representative of all of the designated employees in said unit.

The Federation, on January 26, 1939, filed a charge that the Company had refused to bargain in accordance with the aforesaid certification, and the Board filed a complaint on February 20, 1939, charging that such refusal by the Company was an unfair labor practice (R. 38-A). In this proceeding this petitioner was allowed to intervene (R. 20).

The Board issued its Decision and Order[2] on said complaint on September 19, 1939, affirming its holding that the appropriate unit for collective bargaining is the designated employees in the Company's flat glass division; that the Federation is the exclusive representative of the employees in said unit, and that the refusal of the Company to bar-

1 In re Pittsburgh Plate Glass Co., 10 NLRB 1111 (R. 43).
2 In re Pittsburgh Plate Glass Co., 15 NLRB 515 (R. 430).

gain with the Federation in such unit is an unfair labor practice, and ordering the Company, upon request, to bargain with the Federation as the representative of all of the employees in said unit. Honorable William M. Leiserson dissented from said Decision and Order and held that the complaint against the Company should be dismissed.

The Company filed a petition to review the Decision and Order of January 13, 1939, in the United States Circuit Court of Appeals for the Eighth Circuit (R. 453), and a separate petition to review the Decision and Order of September 19, 1939 (R. 469), which petitions were consolidated with the petition for review which had been filed by petitioner herein (R. 507). Petitioner and the Company also filed in said consolidated cases petitions for leave to adduce additional evidence (R. 536 and 540). On July 23, 1940, the Circuit Court of Appeals entered its opinion (R. 545) and decree (R. 552) denying petitioner's petitions to adduce additional evidence; holding the order of the Board valid; and granting its request for enforcement thereof.[1] Petition for rehearing was denied August 12, 1940 (R. 571).

JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240-a of the Judicial Code, as amended (28 U. S. C. A., Sec. 347-a). The statute involved is The National Labor Relations Act, approved July 5, 1935 (49 St. 449 et seq., 29 U. S. C. A., Sec. 151 et seq., particularly Sec. 9 of said Act, U. S. C. A., Sec. 159).

Petition for certiorari was filed in this court on October 25, 1940, and was granted on December 9, 1940.

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1 Pittsburgh Plate Glass Co. v. NLRB, 113 Fed. (2d) 698.

STATEMENT.

Petitioner is a Missouri corporation, organized under pro forma decree on March 3, 1938. It is a labor organization, admitting to membership employees of the Company's Crystal City plant. At the time of the hearings above mentioned it claimed a membership of 1,500 employees of a total of 1,800 at said plant.

The Company had recognized petitioner as the representative of a majority of its employees at the Crystal City plant and was negotiating a bargaining contract with petitioner in the spring of 1938, but these negotiations were suspended when, on June 17, 1938, at the instance of the Federation, a complaint, charging unfair labor practices, was filed by the Labor Board against the Company (R. 83-84).

This complaint was determined by stipulation between the Company, the Board and the Federation, whereby, among other things, the Company agreed to cease and desist from recognizing or dealing with petitioner as a labor organization and withdraw recognition from petitioner as the representative of its employees (R. 345-349). Petitioner had no notice of this proceeding, no hearing was ever had, no evidence was presented and no facts were found. Petitioner was not a party to the complaint proceeding and did not participate in the stipulation.

At the hearings of both the certification and complaint cases, petitioner was denied the right to introduce material, competent and relevant evidence on the theory that the stipulation entered into between the Company, the Federation and the Board precluded petitioner from asserting bargaining rights for its members. Offers of proof were made and rejected (R. 249-251 and 23-24).

The Federation of Flat Glass Workers admitted that it did not have a majority at the Crystal City plant (R. 209).

A petition bearing 1,270 signatures of employees at the Crystal City plant, requesting that this plant be considered as a separate bargaining unit, was admitted in evidence (R. 253-254).

Thereafter the Federation was certified by the Board as the exclusive bargaining representative of all the employees in the Company's flat glass division and the Circuit Court of Appeals affirmed the decision of the Board.

SPECIFICATIONS OF ERROR.

I.

The Circuit Court of Appeals erred in affirming the action of the Board in determining the appropriate bargaining unit without granting this petitioner a full hearing on the question of representation.

II.

The Court erred in overlooking the fact that the act sedulously protects the rights of employees to self-organization and collective bargaining, and the Board in finding the appropriate bargaining unit should have considered the wishes of the employees at Crystal City and the ultimate effect on their organization, as well as the declared public policy of the act.

SUMMARY OF POINTS TO BE ARGUED.

I.

The evidence offered by this petitioner under its offers of proof should have been admitted:

1. Because it was material, competent, relevant and necessary to a fair and final adjudication of the question of representation and certification;

2. Because the Rules and Regulations of the National Labor Relations Board, entitled "Procedure Under Section 9 (c) of the Act for the Investigation and Certification of Representatives," provide that, "It shall be the duty of the Trial Examiner to inquire fully into the question of representation."

Article III, Sec. 5, Rules and Regulations of the National Labor Relations Board;
Morgan et al. v. United States et al., 304 U. S. 1.

3. Because by excluding this evidence petitioner was not afforded an opportunity to be heard, which deprived petitioner of its constitutional rights.

Morgan et al. v. United States et al., supra;
12 C. J. 1226, 1234;
Riverside & Dan River Cotton Mills v. Menefee, 237 U. S. 189.

II.

1. In determining the appropriate bargaining unit, the rights of the employees guaranteed to them under the Labor Act, as well as the declared public policy of the act, must be considered.

National Licorice Co. v. National Labor Relations Board, 60 S. Ct. 569, l. c. 576, 309 U. S. 350.

2. And the wishes of the employees are an important and controlling factor.

ARGUMENT.

I.

In the complaint case, on behalf of the Crystal City Glass Workers' Union (referred to hereafter as the Union) proof was offered and received that it is a corporation organized under the laws of the State of Missouri, providing for the incorporation of pro forma decree organizations; that its members are employees of Plant No. 9 of the Pittsburgh Plate Glass Company at Crystal City, Missouri, that it is a "labor organization" as that term is defined by the National Labor Relations Act, having officers and by-laws. This Union then offered to prove by competent witnesses that it had a membership of approximately 1,500 out of a total of approximately 1,800 employees at the Crystal City plant of the Company; that the members of this Union, being a majority of all the employees at the said plant, had designated and selected it as their representative for purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; that the members of this Union are opposed to being represented for the purposes of collective bargaining by the Federation of Flat Glass Workers of America affiliated with the C. I. O.; that the said Union is not dominated nor has its formation or administration been interfered with by the Company, nor has it received any financial or other support from the Company; that the employees at the Crystal City plant have distinct interests from the employees at other plants of the Company; that the representatives of this Union had bargained collectively for the members thereof with the Company until the Company declined to continue such bargaining in view of a complaint filed by the Federation of Flat Glass Workers before the Board in the Fourteenth Region in Case C-778, to which proceeding this Union was not a party, and that

since the stipulation entered into between the Board, the Federation of Flat Glass Workers of America and the Company in that case on July 22, 1938, and since the certification of the Federation of Flat Glass Workers of America as the representative for collective bargaining for the employees at all of the flat glass plants of the Company on January 13, 1939, in Case No. R-1058 of the Board, the membership of this Union has increased in numbers (R. 23-24).

Objection on the part of the Federation of Flat Glass Workers of America was sustained to the admission of this evidence.

Exceptions to this ruling were timely and specifically read into the record (R. 24-25).

In the representation case, a similar offer of proof, though not as exhaustive, was made and was also denied (R. 249-250). In that case the Trial Examiner ruled that the Union was a party to the proceeding, and in the complaint case the Union was permitted to intervene, but in neither proceeding was it accorded an opportunity to be heard and to present evidence on the issues involved.

The chief ground of the Federation's objection related to a proceeding which was instituted by it against the Company in the Fourteenth Region at St. Louis, Missouri, being Case No. C-778, decided September 22, 1938, entitled "In the Matter of Pittsburgh Plate Glass Company, Works No. 9, and Federation of Flat Glass Workers of America, affiliated with the C. I. O.," reported in 8 N. L. R. B. 149. This proceeding was determined by a stipulation in which, among other things, the Pittsburgh Plate Glass Company agreed to cease and desist from recognizing or dealing with the Crystal City Glass Workers Union as a labor organization and to withdraw recognition from said Union as the representative of its employees (R. 345-349). No hearing

was ever had, no evidence was presented and no facts were found. The Crystal City Glass Workers Union had no notice, was not a party to the proceeding, and it was not a party to the stipulation. It had no opportunity to be heard and could not consent or object to the provisions of the stipulation.

The Board, in affirming the trial examiner, said, in effect, that even if this evidence had been allowed to go into the record and was accepted as true, the Board would not alter its decision as to what constituted the appropriate bargaining unit; hence, the petitioner had not been prejudiced by the rulings of the trial examiner. Such a ruling is arbitrary. The rules and regulations of the Board, Article III, Section 5, entitled, "Procedure Under Section 9 (c) of the Act for the Investigation and Certification of Representatives," contains a mandatory direction that "It **shall** be the duty of the Trial Examiner to inquire **fully** into the question of representation." The evidence submitted was material on the question of representation, and the Board should not be allowed to say, in derogation of its own rules and regulations, that even if it had considered such testimony it would not change its decision. If this evidence was admissible, petitioner was entitled to its benefit and to bring it before this Court as a part of its record.

It is indeed obvious that, unless the hearing is exhaustive, the rights of the employees on the question of representation cannot be fully determined and the Company's position with reference to recognition cannot be defined.

In the case of **Morgan et al. v. United States et al.**, 304 U. S. 1, this Court had occasion to construe Section 310 of the Packers and Stockyards Act (42 Stat. 159, 166; 7 U. S. C. 211), which provides: "Whenever after full hearing upon a complaint * * * or after full hearing under an order * * *." It was contended that an order was made

without a hearing, as required by the statute. The Court, by Mr. Chief Justice Hughes (l. c. pp. 14-15), says:

> "The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing' essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.' And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a 'full hearing.'"

The Court, on page 18, further says:

> "Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command."

Further quoting from this opinion, page 19, the Court says:

> "Congress, in requiring a 'full hearing,' had regard to judicial standards—not in any technical sense but with respect to those fundamental requirements of

fairness which are of the essence of due process in a proceeding of a judicial nature. If in an equity cause, a special master or the trial judge permitted the plaintiff's attorney to formulate the findings upon the evidence, conferred ex parte with the plaintiff's attorney regarding them, and then adopted his proposals without affording an opportunity to his opponent to know their contents and present objections, there would be no hesitation in setting aside the report or decree as having been made without a fair hearing."

The Crystal City Glass Workers' Union was never allowed to present its material evidence on the question of representation. The Trial Examiner did not, therefore, **inquire fully into the question of representation,** as he is required to do under Section 5, Article III, hereinbefore stated.

Furthermore, the action of the Trial Examiner in excluding this evidence offered on behalf of the Crystal City Glass Workers' Union deprived it of its constitutional rights, that of due process of law and equal protection of the law. Whatever was done in the proceeding which was instituted and settled before the Fourteenth Regional Board could have no binding effect on the Crystal City Union. It is an elementary principle of constitutional law that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that Court has no jurisdiction do not constitute due process of law. 12 C. J. 1226. The Union has never been accorded a hearing, but has been condemned, nevertheless.

"That to condemn without a hearing is repugnant to the due process clause of the fourteenth amendment needs nothing but statement. Every man is entitled to his day in court before his rights can be finally disposed of, and he cannot be divested of this right by any act of the legislature." 12 C. J. 1234.

Morgan et al. v. United States et al., supra, l. c. 19.

Without giving the Union an opportunity to be heard on these issues the Board could not validly and fairly determine any appropriate unit in the Crystal City Plant No. 9, or certify any representative for collective bargaining for the employees at that plant.

The question of the Board's authority to make an order affecting the rights of employees in a proceeding wherein such employees are not parties, was recently adjudicated by this Court in the cases of National Licorice Company v. National Labor Relations Board, 60 S. Ct. 569, 309 U. S. 350, and National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261. Those cases, however, must be distinguished from the instant case, because the facts were different.

In the National Licorice Co. case certain contracts were executed between the employer and an employees' committee, which committee had been dominated by the employer. After a hearing it was found that these contracts were in violation of the Labor Act and were properly subjected to the remedial action of the Board. The employees who made the contracts were not parties to the Board's proceeding. They were, however, parties to contracts which were procured through violation of the Act and which had the effect of continuing means of violating it, thereby infringing the rights guaranteed by the Act.

In the Pennsylvania Greyhound Lines case the Labor Board found, **after a full hearing**, that the employers were guilty of unfair labor practices, in that they had interfered with, restrained and coerced employees in the exercise of their rights guaranteed by the Act; that they had dominated and interfered with the formation and administration of a labor organization of their employees and had contributed financial and other support to it, in violation of the Act. The Court held that the Association (the em-

ployees' organization) was not entitled to notice and hearing because the Board had found, under the evidence, that the employer had violated the Act, and the order was against the employer.

However, in the case at bar, there never was a hearing on the complaint. The proceeding was settled by a stipulation or agreement between the parties to which this petitioner was not a party. There was never any finding that the Company had violated the Act respecting this petitioner. The stipulation provided as follows:

> "1. The Respondent, its officers, agents, successors and assigns will forthwith cease and desist from such unfair labor practices as have occurred in the past" (R. 347).

And it further provided that the Company would not recognize or deal with this petitioner as a labor organization (R. 348).

On the basis of said stipulation the Board entered its order withdrawing recognition of petitioner as a labor organization, and prohibiting petitioner from introducing material evidence at the hearings on the question of the appropriate bargaining unit. This action, petitioner contends, was arbitrary, it deprived petitioner of a full inquiry into the question of representation, and was a denial of due process of law.

II.

The Court, in its opinion, declared that, "The public interest, as well as that of the various groups of employees of the Company, was to be considered, and the question as to what bargaining unit would best effectuate the purposes of the Act and prevent obstructions to interstate commerce by encouraging collective bargaining

and protecting its exercise was a debatable question to be determined by the Board."

But the Board could only determine this question from the facts of this particular case, as applied to the standards imposed by Congress in the act itself.

In the case of **National Labor Relations Board v. Carlisle Lumber Co.**, 99 F. (2), l. c. 537, it is said that "the real purpose of the statute was to deal with obstructions affecting commerce and that such purpose must be controlling in the construction of the act." Keeping that purpose in mind as pertaining to the facts in this case, there is nothing in the Board's decision to indicate that there would be any effect on commerce, irrespective whom the bargaining representative might be. Certainly there is nothing in the Board's decision which indicates that commerce might be obstructed if this petitioner should be designated the bargaining unit. On the other hand, the evidence showed that the history of collective bargaining at the various plants has been carried on successfully in the past and there is nothing to indicate or anticipate failure in this respect if petitioner was designated the bargaining unit.

Petitioner's members are entitled to the protection of the act; it encourages collective bargaining by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment (**National Licorice Co. v. National Labor Relations Board**, 60 S. Ct. 569, l. c. 576). In this connection the wishes of the employees are an important consideration. And this is especially true in situations like the present, where it becomes the deciding factor.

In the case of **Allied Laboratories, Inc.**, 23 N. L. R. B.

14 (April 25, 1940), the Board, in ordering an election of representatives under a set of facts not unlike the instant proceeding made the following declaration:

> "From the foregoing it appears that the two plants might properly be considered either as two separate bargaining units or as a single unit. Under the circumstances we will be guided by the desires of the employees themselves. Since the record is not sufficiently clear as to the employees' wishes, elections are necessary to make this determination."

To the same effect is the decision of the Board in the case of **Globe Machine & Stamping Co.**, 3 N. L. R. B. No. 25, in which the Board said:

> "In such a case, where the considerations are so evenly balanced, the determining factor is the desire of the men themselves."

Petitioner contends that the wishes of the employees at the Crystal City Plant is the deciding factor in the selection of the appropriate bargaining unit for that plant, and to ignore such wishes is unfair, unjust, contrary to the act and arbitrary.

CONCLUSION.

For the reasons herein set forth petitioner contends that the decision and order of the Circuit Court of Appeals be reversed and the cause be remanded to the National Labor Relations Board with directions to make such orders and grant such relief to petitioner as this Honorable Court may deem proper in the premises.

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